

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

MDL NO. 1456

THIS DOCUMENT RELATES TO:
TRACK 2 SETTLEMENT

CIVIL ACTION: 01-CV-12257-PBS

Judge Patti B. Saris

**CLASS PLAINTIFFS' MOTION TO TRANSFER TRACK TWO SETTLEMENT
FUNDS AND TO APPOINT NEW ESCROW AGENT**

Class Plaintiffs, after consultation with and agreement by counsel for Track Two Defendants, and pursuant to Paragraph II.4 of the Class Escrow Agreement dated March 7, 2008 (Exhibit I to the Track Two Settlement Agreement at Docket No. 5133-4) ("Class Escrow Agreement"), hereby move this Court for an order appointing Huntington National Bank, 1230 Avenue of the Americas, New York, New York ("Huntington") the Escrow Agent to hold and invest any remaining Track Two Settlement funds in accordance with the Revised Class Escrow Agreement, attached hereto as Exhibit A. Class Counsel also seek an order directing the current escrow agent under the Class Escrow Agreement, Frontier Bank ("Frontier") and its successor-in-interest, Union Bank ("Union") to liquidate all investments of remaining Track Two Settlement assets and transfer all remaining settlement funds to Huntington.

On January 30, 2012, the last remaining objector to file an appeal to this Court's order granting final approval of the Track Two Settlement dismissed her appeal with prejudice. Docket No. 8052. Now that all appeals to the final approval of the settlement have been resolved, under the terms of the Settlement Agreement Track Two Defendants will soon pay all

remaining settlement funds to Plaintiffs to be placed in escrow and used to distribute to class members in accordance with this Court's final approval order. Under the Settlement the Court had appointed Frontier as Escrow Agent pursuant to the original Class Escrow Agreement. That was in 2008.

In November 2009, in relation to monies held by Frontier in the GSK Settlement, Class Plaintiffs requested an order from this Court replacing Frontier as the escrow agent in the GSK Settlement and appointing a new escrow agent. The reasons for that request were set out for the Court (Docket Nos. 6656 and 6676) and included the fact that Frontier Bank had recently received a warning notice of possible delisting from the NASDAQ as result of its poor financial performance. The Court granted class counsel's request and appointed a new escrow agent in the GSK Settlement. Electronic Endorsement dated December 9, 2009. In May 2011, in relation to the BMS Settlement, the Court granted a similar request replacing Frontier Bank as the escrow agent for that settlement. Docket No. 7555 at p. 3.

Since the time of those filings, Frontier was acquired by Union Bank. As successor-in-interest to Frontier, Union currently holds approximately \$269,000.00 in settlement funds recently advanced by Track Two Defendants. Under the terms of the Track Two Settlement Agreement, settlement funds advanced to date by Track Two Defendants have been used to pay for costs associated with notice and administration of the settlement.

Now that payment of the remaining Track Two settlement funds of approximately \$89 million is imminent, Class Counsel identified a financial institution that would provide adequate security for the bulk of the settlement funds prior to distribution to class members as well as provide escrow services to the class at competitive rates. Huntington is a large and stable financial institution, ranked in size as one of the top 1% of banks in the United States, with over

\$54 billion in assets. Class Counsel has negotiated a fee structure with Huntington that, in their experience, provides very favorable terms to the Class.

The parties, including Huntington, have agreed to the terms of the Revised Class Escrow Agreement attached hereto as Exhibit A. In all material respects, other than the identity of the Escrow Agent, and a change to reflect the acurrent operating name of the claims administrator (d/b/a Rust Consulting, Inc.), the Revised Class Escrow Agreement is identical to the original Class Escrow Agreement.

Class Plaintiffs therefore move the Court for an order 1) directing Union Bank to liquidate all investments of remaining Track Two Settlement assets and transfer all remaining settlement funds to Huntington Bank, and 2) appointing Huntington Bank the Escrow Agent to hold and invest all remaining Track Two Settlement funds in accordance with the Revised Class Escrow Agreement.

DATED: February 2, 2012

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **CLASS PLAINTIFFS' MOTION TO TRANSFER TRACK TWO SETTLEMENT FUNDS AND TO APPOINT NEW ESCROW AGENT** be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on February 2, 2012, a copy to LexisNexis File and Serve for Posting and notification to all parties

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